88-609

NO.

Supreme Court, U.S.
FILED
SEP 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Tern, 1988

EARLENE POLYAK — Appellant

vs

BUFORD EVANS & SONS — Appellees

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

QUESTIONS PRESENTED

1. Does the affirming by the Court of Appeals of District Court granting State Judge ABSOLUTE JUDICIAL IMMUNITY in denial of appeal as a right to Tennessee Code Annotated 29-27-117 Partition in Kind, since Amended Rule 5(a) Tenessee Rules of Appellate Procedure deleted the requirement notice of appeal to appellate court, render state statute invalid and repugnent to the constitution?

2. Does the Court of Appeal affirming of District Court granting ABSOLUTE JUDICIAL IMMUNITY to State Judge conflict with 42 U.S.C. 1983?

3. Does the Court of Appeals affirming of District Judge's conflict of interest and failure to rescue in continued sanction against pro se litigant in enjoin against complaints regarding properties in United States District Court deny due process and the depriviation of civil and constitutional laws and rights?

4. Is the Court of Appeals affirming the sale of property after bonded for appeal constitutional? And sanction District Court's granting lawyer lein?

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PARTIES TO THE PROCEEDINGS

Appellant below is Earlene Polyak, Appeal No. 87-6272, District No. 1:85-0120 (COUNTER-CLAIM)

Appellees below are Buford Evans & Sons.

Companion cases:

Earlene Polyak v Thomas Stack, Henry Henry & Stack District No. 1;85-0125; Earlene Polyak v William Boston, Boston Bates & Holt, District No. 3:85X-108, and 1:86-0036. Buford Evans & Sons v Earlene Polyak was joined in the

United States District Court under 28 U.S.C. 1441(c) to Jim Hamilton, and the Circuit Court of Lawrence County No. 1:85-0116.

Re: Earlene Polyak, Appeal No. 86-5536, and Nos. 86-5460 and 86-5462.

Earlene Polyak v Frank Hulen and Wilma Lesnansky No. 1:84-0083. All cases arise out of Frank Hulne and Wilma Lesnansky v Earlene Polyak No. 1:85-0082.

OPINIONS BELOW

The opinions in the United States Court of Appeals for the Sixth Circuit are set forth in Appendix A. The opinions in the United States District Court are set forth in Appendix B. And the pertinent opinions from companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals was issued on May 25, and Petition for Rehear denied on July 12, 1988. This brief is being submitted within ninety (90) days thereof.

This appeal is taken pursuant to 28 U.S.C. 1254(c).

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JURISDICTION

The order of the United States Court of Appeals was issued on May 25, and Petition for Rehear denied on July 12, 1988. This brief is being submitted within ninety (90) days thereof.

This appeal is taken pursuant to 28 U.S.C. 1254(c).

The jurisdiction of the Court is invoked pursuant to Article III, Sec. 2, which states that the judicial power shall extend to all cases of law and equity, between a state and citizens of another state; and between citizens of different states.

The federal, civil and constitutional questions pertaining to due process and the depriviation of these civil and constitutional rights and laws were timely raised throughout the judicial proceedings.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amen. V cl. 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of jury trial shall be preserved...

U.S. Const. VII.

The pertinent portion of the Eight Amendment provides as follows:

> ...nor shall excessive fines, nor cruel and unusual punishment be inflicted.

U.S. Const. Amend. VIII.

The pertinent portion of the Fourteenth Amendment provides as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of hte united States; Nor shall any state deprive any person out of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, 1..

28 U.S.C. 1443:

> Any of the following civil actions commenced in a State Sourt may be removed by defendant to District Court...
>
> (1) Against any person who is denied or cannot enforce in the courts of such state providing for equal civil rights of citizens of the United States or of all persons within its jurisdiction,
>
> (2) for any act under the color of authority deprived from any law providing for equal rights.

42 U.S.C. Sec. 1981:

> All persons within the jurisdiction of the

United States shall have the same right in every state to make and enforce contracts to sue...to full and equal benefit of all laws.

42 U.S.C. Sec. 1982:

All citizens of the United States shall have the same right in every state...to inherit, hold, purchase, lease and convey real and personal property.

42 U.S.C. 1983:

Every person who under the color of any statute ordinance, regulation, custom or usuage of any state...subject or caused to be subjected any citizen of the United States or other person within its jurisdiction thereto the depriviation of rights and privilages or immunities secured by the constitution and laws, shall be liable to the party in the action at law in equity or some other property proceeding for parties.

28 U.S.C. 2403:

In any action...where the constitutionality of a statute of that state affecting public interest is drawn into question.

28 U.S.C. 1651:

...all writs necessary...

F.R.C.P. Rule 60(b)

On motion and such terms as are just, the

> Court may relieve a party or his legal representative from a final judgment, order, or proceeding.

TENNESSEE CODE ANNOTATED:

> If exact partition cannot be made without material injury to the parties or some one of them (the commissioners), may make partition as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares (1932).

TENNESSEE CODE ANNOTATED:

> Rule 3, Appeal of final decisions are of right and lie to the Court of Appeals and Supreme Court.

TENNESSEE RULES OF CIVIL PROCEDURE:

> Rule 5(a) Amended, on August 15, 1984, deleted the requirement that a Notice of Appeal be filed with the clerk of the Court of Appeals.

STATEMENT OF THE CASE

In this case, the United States Court of Appeals for the Sixth Circuit again affirms the conflict of interest against state statute and case laws supported by federal and constitutional laws and property rights and interests on which pro se litigant relies in bias for local residents by the Honorable Thomas A.

Higgins. She contends that the Supreme Court can no longer sanction this abuse of discreation in the denial of federal protection in due process and the deprivation of civil and constitutional rights and laws supported by the Fifth, Seventh and Fourteenth Amendments in the **"taking and sale of pro se litigant properties"** without jury trial, and compensation, or any appeal ever being heard in the lower courts.

The District Court took complete jurisdiction of this case when Judge Higgins' dismissed 1:85-0120 without jury trial on October 28, 1987 without notification to Appellant while she was in the University of Alabama Cardiac Unit for coronary bypass surgery. Case Nos. 1:84-0082 and 1:85-0083 were also dismissed on that day while Appellant was hospitalized and the Court of Appeals has affirmed **all dismissals in docket control** disregards bond, motion to disqualify (App. B p. 14).

On July 28, 1983, Buford Evans & Sons

entered upon Appellant's property without her knowledge or permission and conducted invalid survey (App. C p. 48).

Buford Evans alleges that survey conducted to prove property could be equally partition in kind and value was prepared by Thomas Stack Henry Henry & Stack No. 1:85-0125. A part of this case, the Denial of Restraining Order against sale of property was appealed and dismissed in docket control Court of Appeals No. 86-5199. The Honorable Thomas A. Wiseman found merit in allegations of negligence and malfeasance (App.B p.15). But Judge Higgins dismissed this case without allowing it to go to the jury in District Court on June 3, 1988, and in Court of Appeals No. 88-5717/5763/5794.

Although Thomas Stack Henry Henry & Stack did not enter Mr. Evans evaluation of property, memorandum brief, prepare a transcript of proceedings, or bills for restoration of house for a retirement home on Appellant's partition in kind of property settled by agreement in 1976, the hand-drawn map correlates with the

order that property cannot be partitioned prepared for plaintiff's by Boston Bates & Holt (see Map tract #3; and order Item #2 App. C p. 46-48).

The order to sell without any compensation was signed by William Boston Boston Bates & Holt, who represented the family since 1976, until dividing loyalities in 1982, and attorney for defense Thomas Stack, over Appellant's objections to the Honorable Jim Hamilton Chancery No. 1974 on October 19, 1983.

After subjecting Appellant on December 26, 1984, scheduled March 1985, no attorney, or preparation, while acutely ill with bronchitis and heart problems, to trial before hostile jury, Judge Hamilton held judgment before entering from December 26, 1984 until August 22, 1985, in Evans & Sons suit for invalid survey Circuit No. 10647. Judge Hamilton denied Motion to Forward Records to Tennessee Court of Appeals on November 7, 1985 (App. C p. 44).

On August 15, 1984, Rule 5(a) Tennessee

Rules of Appellate Procedure was amended to delete the requirement that notice of appeal be filed in the Court of Appeals, which allows state Judge to determine who can appeal by allowing record to be forwarded (App. C p.).

On November 8, 1985, Appellant filed complaint for the denial of due process and depriviation of civil and constitutional rights and laws under color of usuage 42 U.S.C. 1983, against the Honorable Jim Hamilton and the Circuit Court of Lawrence County in the United States District Court No. 1:85-0116.

Appellant joined this case in which she was denied appeal as a right supported by Tennessee Statute in Rule 3 Tennessee Rules of Appellate procedure under 28 U.S.C. 1441(c) to 1:85-0116 in the District Court No. 1:85-0120.

Appellant filed complaint for negligence in the care and protection of her best interest and constitutional rights at this time against Thomas Stack, Henry Henry & Stack No. 1:85-0120 and District Court No. 3:85X-108 Earlene Polyak v William Boston Boston Bates & Holt.

On November 13, 1985, Judge Wiseman dismissed 1:85-0116 within five days without hearing and (App. C p. 40) enjoined Appellant from filing further suits in the District Court arising out of litigation over her property in Lawrence County, denied filing 3:85X-108.

On April 30, 1986, in answer to Writ of Mandamus to schedule jury trials No. 86-5460, and Earlene Polyak v Thomas Stack Henry Henry & Stack No. 86-5460, and Earlene Polyak v William Boston Boston Bates & Holt No. 86-54-62 Judge Wiseman wrote letter to John Hehman Clerk Court of Appeals explaining enjoin (App. C p. 40).

"That order was entered because of previous filings of Mrs. Ployak against various persons in this Court." ...and she should be severly sanctioned therefore. Appellant believes that Judge Wiseman is referring to the division of the Federal Court located in the same building as the State Court where Judge presides and Jim Hamilton and local lawyers try cases. She sent her complaints to Nashville to avoid local political pressure and prejudice

but assigned to Columbia Court.

Appellant tried to appeal enjoin in Judge's order rescuing on May 2, 1986 No. 86-5536, and 1:85-0116, but appeal disregarded and **appeals dismissed in docket control in Court of Appeals.**

All of the above cases arise out of initial hearing in which Judge Hamilton verbally ordered property sold while jury out on trial and Appellant acutely ill as a result of nationwide heat-wave with warning to Heart patients about 102 degrees on July 29, 1983. Denied New Trial (App. C p. 53).

After Thomas Stack Henry Henry & Stack disregarded Appellant's confrontation of unfair and an unjust hearing within three days on August 1, 1983, and demands for a New Trial, Appellant confronted Judge Hamilton with demand for a New Trial on December 19, 1983 (App. C p. 53).

Judge Hamilton instructed William Boston to prepare order of denial and pro se litigant to appeal within ninety (90) days. She

appealed order prepared by Boston Bates & Holt signed by Charles Holt and Judge Hamilton which is UNAPPEALABLE JUDGMENT (App. C p. 53).

The Court of Appeals, Tennessee dismissed appeal on **unappealable judgment on April 26, 1984, and no appeal to this sale without jury trial has ever been heard in any Court of the United States** (App. C p. 53).

Although Tennesse Court of Appeals found UNAPPEALABLE JUDGMENT **"NOT A FINAL APPEALABLE JUDGMENT UNDER RULE 3 TRAP..."** Robert Boston son of William Boston Boston Bates & Holt was successful in getting complaint dismissed on selected items from state case in 1:84-0082 Frank Hulen and Wilma Lesnansky v Earlene Polyak (App C p. 53).

Appellant's complaint under diversity of citizenship for partition in kind and in severalty supported by Tennessee Statute was dismissed when Robert Boston again submitted selected materials excluding order on April 26, 1984, as res judiciata in the District Court No. 1:84-0083.

Judge Wiseman awarded Robert Boston costs and attorney fees when services composed mostly of long distance call to his father William Boston (App. C p. 45).

These cases were dismissed in the U.S. Court of Appeals in **docket control** affirming $805.01, but Robert Boston did not serve Appellant to allow for objections, and he entered $1,112.76 in the District Court without serving certificate again and used this amount for lein to sell Appellant's on her **"interest therein."** Appellant submitted Complaint and Counter-Claim to District Court No. 1:87-0075, but Judge Higgins denied Motion to Disqualify (App. B pp. 15-23). (Affidavit A(a)(1).

Motion to Disqualify from all Appellant's cases was submitted on September 23, 1986, and denied on September 24, 1987, without allowing five days for objection and case remanded. Appeal was dismissed in docket control in the Court of Appeals, and property has been sold on Appellant's "interest therein" (App.C p.49).

Appellant's soly owned forty (40) acres of property in Lawrence County became involved when Circuit Court Clerk demanded that she get a copy of deed before he would appeal of this case from General Sessions to Circuit Court on October 10, 1984. Buford Evans & Sons was awarded $475.00 on December 26, 1984. And they have placed lein on Appellant's "interest therein" which is covered in Second Order to sell (App. C p.32).

Appellant believes that survey invalid and hand drawn map invalid, and award unjust, but she has never been allowed to appeal case as dismissed in District Court and in the Court of Appeals in docket control after letter to case supervisor from attorney and again after briefs in docket control when appeal under 28 U.S.C. 1443 from District Court (App. C p. 48).

Judge Higgins dismissed case after denying Motion to Disqualify and objections still disregarded in District Court and affirmed by Court of Appeals.

REASONS WHY QUESTIONS REQUIRE PLENARY CONSIDERATION

1. The Court of Appeals abuses discreation in the dismissal in docket control of appeal to District Judge's conflict of interest and the denial of due process and deprivation of civil and constitutional rights and laws and renders state statute on which relied upon invalid and repugnent to the constitution of the United States.

The Court of Appeals abuses discreation in the dismissal in docket control of pro se litigant's appeal to the Honorable Thomas A. Higgins' dismissal of case for conflict of interest in upholding Tennessee Statute 29-27-117, case laws, civil and constitutional laws and rights in bias for local persons and the depriviation of civil and constitutional rights and laws. This bias is supported in affirming by the Court of Appeals of dismissal of case and remand the state. The Court of Appeals errs in misapprehension that appeal for denial of removal and stay in reconsideration when appeal and petition for rehear for conflict of interest and failure to rescue, and demand for a jury trial in the District Court (87-6272).

The Court of Appeals continues to dismiss all of Appellant's appeals regarding properties in Lawrence County, Tennessee, in docket control, when her right to partition in kind in this property is supported by Tennessee Statute and Case law:

> 27-29-117. If exact partition cannot be made without material injury to the parties, or some one of them..., may make the partition as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares. Tennesse Code ammptated 1932.

This property in Lawrence County was divided in settlement by agreement in 1976, and as a result of settlement Appellant and her husband has restored the house their agreed partition and maintained it to this day for a retirement home at their expense.

> The court may...in accordance with the wishes of one or more cotenants, order an allotment of shares...**in kind and sereralty**, and sale of the other portion if it is not susceptable to partition in kind. Vandenburg v Molder, 4 Tenn. Civ. App. (Higgins) 111 (1913).

Appellant has been in possession of her agreed partition of land for more than ten (10)

years. "Courts in almost all states in such circumstances have granted" specific performance. Hagerty v Hagerty, Tenn. 172 259 (1919). Courts have said taking possession and making good improvements "constitutes good consideration in equity." Lindell v Lindell, Min. 135 368 371 (1919). And recent Tennessee case "Parole partition of land followed by possession is binding and enforceable. Martin v Taylor, Tenn (1975) 521 S.W. 2d 582.

Partition in kind of property is supported by the Fifth which provides that no **person shall be deprived of property** without due process of law...nor private property be taken for public use without just compensation. The Seventh Amendment provides...right of jury trial. The Fourteenth Amendment provides "No state shall make or enforce any law"...nor deprive any person of property...without due process of law...nor deny equal protection of law.

> The Supreme Court has...recognized due process requirements are implicated whenever an enforcement power of a government is employed to deprive an individual of an interest derived from common law in peaceful possession, Lindsey v Norbert, 405 U.S. 56 (1972) of real or personal property...whether the property is taken to meet a need...or... benefit of an indidivual.

The Court of Appeals has dismissed this case and all of pro se litigant's appeals, and petitions for rehear en banc, and petitions for rehear without oral argument or any kind of hearing.

The Court of Appeals further discriminates against Appellant in paid appeal of one hundred five dollars, when the Case Supervisor issues what appears to be a forma pauperia for a PRO SE APPELLANT'S Brief (See App.A p.8).

> 2. The Court of Appeals supports abuse of discreation with denial of misapprehension in case in affirming conflict of interest and failure to rescue of District Judge with dismissal in denial of due process and depriviation of civil and constitutional rights and laws with initial remand of case in manipulative dismissal in District Court.

The Court of Appeals supports abuse of discreation with denial of misapprehension in appeal of dismissal of appeal of conflict of interest and failure to rescue of the District Judge in Order on October 28, 1987, dismissing case while Appellant in Cardiac Unit of Hospital in Alabama, which will result in Appellant's additional forty (40) acres to travel trailer and "interest therein" joint properties being sold at **"Public Auction,"** for invalid survey and lein.

The District Judge took full federal jurisdiction of this case in dismissal on October 28, 1987, and dispelled any alleged grounds for second remand (87-6272).

Buford Evans & Sons entered upon Appellant's property without her knowledge and permission on July 28, 1983, and conducted invalid survey (85-6135). Evans admits hand-drawn map is not to scale on December 26, 1984, and that he does not hold surveyor's license.

Buford Evans & Sons allege that attorney for the defense Thomas Stack, Henry Henry & Stack, retained their services to prove that property could be partitioned in kind in parts of equal value, **but hand drawn map of tract #3, correlates with property could not be partitioned prepared by Boston Bates & Holt to sell property in item #2 of order. The woods are heavily colored in tract #2.** This order to sell was signed over Appellant's objections to Thomas Stack and Judge Hamilton and by William Boston.

On August 15, 1984, Rule 5(a) Tennessee Rules of Appellate Procedure amended to delete requirement that Notice of Appeal be filed in Court of Appeals **AND DISCRIMINATION AGAINST RACE, SEX, AND PRO SE LITIGANT.**

On November 7, 1985, denied motion to forward records and denied appeal as a right pursuant to Rule 3 TRAP. Appellant appealed denial of due process civil and constitutional rights and laws under color of authority 28 U.S.C. 1443(1)(2) (by state judge).

Buford Evans & Sons joined to complaint against Hamilton and the Circuit Court of Lawrence County D.C. 1:85-0116, for denial of due process and depriviation of civil and constitutional rights under 28 U.S.C. 1441(c) in the District Court No. 1:84-0120.

The Honorable Thomas A. Wiseman dismissed within five days giving State Judge "absolute judicial immunity" to State Judge 1:85-0116, and this case 1:85-0120 in the District Court in Columbia, Tennessee.

> congress intended 1983 to be an independent protection for federal right and there is nothing to suggest that congress intended to extend the common law of "judicial immunity" to insulate state judge completely from federal review. United States v Detroit, 200 US 321 26 S Ct. 282 287 50 L Ed 499.

The District Judge enjoined Appellant from filing further cases in the District regarding her property in Lawrence County on November 13, 1985. The District Court did not consider 1443 or that case under original jurisdiction and joined under 1441(c), and remanded to state.

The United States Court of Appeals did not consider join 1441(c) under 1443(1)(2). In fact, the District Court did not transfer records on appeal. The case dismissed after letter from lawyer to Ms. Yvonne Henderson, Case Supervisor without briefs, but she did allow briefs and dismissed **for second time in docket control** and remanded to state.

The Court of Appeals erred in dismissal of remand without considering 1443(1)(2), and prejudice and bias in race, in which recent Supreme Court case supports prejudice in different circumstances as Appellant recently experienced in Federal Court in Nashville, Tennesse, and appeal to the Court of Appeals No. 88-5717.

Appellant was denied Appeal as a right Tennessee law supported by state statute, John v Mississippi, 421 U.S. 213 222 (1975); Smith v Winters, 717 2d 191 194 (5th Cir 1983), and **by a state judge** Detroit Police Lts v City of Detroit, 597 F 2d at 568.

And some of the cases imply that permitting remand of pendent state claims denies defendant protection of the removal statute and encourages **manipulative dismissals**. In Re. Greyhound Lines, Inc. 598 F 2d 884.

The Court of Appeals errs in misapprehension of appeal for conflict of interest and failure to rescue and failure to grant by **default jury trial** to pro see litigant when Buford Evans & Sons have failed to prosecute in District Court and disregarded to submission of **one brief** to Court of Appeals.

3. The Court of Appeals affirms the conflict of interest by the District Judge in the denial of federal protection to pro se litigant in hospital bed in manipulative dismissal in bias for various persons in **denial of due process and the depriviation of civil and constitutional rights and laws supported by the constitution of United States.**

Appellant made every effort possible to notify Judge Higgins that she was acutely ill and scheduled for multiple bypass surgery with heart specialist and physicians statements and Affidavit, but Judge dismissed motion for a continuance on October 27, 1987, the same day

that she made another attempt to contact the District Court with telegram from hospital. Judge dismissed 1:85-0120; 1:84-0082 and 1:84-0083 and the fact that telegram received verified by the Western Union (See Appendix B).

At this time, the District Court dismissed all of pro se litigant's complaints without jury trial and any kind of hearing, and the Court of Appeals affirms every dismissal with dismissals in docket control and denial of Petition for Rehear.

On April 30, 1986, Judge Wiseman explained in letter to John P. Hehman, Clerk of Court of Appeals that order enjoining Appellant on November 13, 1985, **"THAT ORDER WAS ENTERED BECAUSE OF PREVIOUS FILINGS OF MRS. POLYAK AGAINST VARIOUS PERSONS IN THIS COURT."** She believes that Judge is referring to Columbia Court located with State Court in the same building as Federal Court where Judge presides and lawyers practice and she has tried to appeal enjoin to Court of Appeals two times in 85-5634 and 86-5536.

> And the relevant factors determining whether an act of a "judge" is a "judicial one" relates to the nature of the act itself, whether it is a function normally performed by a judge to the expectation of the parties...Stump v Sparkman, 435 U.S. at 1107.

Appellant is pro se litigant and does not have any knowledge or expertise in the legal profession, but she believes that dismissal of all cases in support Judge Wiseman's order "she should be severly sanction therefore." She believes that this sanction is unjust and in conflict with the right to sue 1981, right to inherit and hold property 1982, and the depriviation of civil and constitutional rights and laws under the color of ususage by the state judge should be liable in "at law in equity or some other proper proceeding."

> Appellant's do not contend that state officials are immune from suits to restrain unconstitutional acts undertaken in their official capacities. The law clearly recognizes the right of and interested party to force state officials to act in accordance with the constitution. Jordon v Gilligan, 500 F 2d 701 705 (1974).

The Court of Appeals affirms conflict of

interest and failure to rescue in all pro se litigants cases in bias for various persons by District Judges with remand to state for the sale of her properties without jury trial compensation or appeal ever being heard in any Court and she disregards Motion to Stay Mandate of "cruel and unusal punishmant to pro se litigant to this Supreme Court."

> ...but Supreme Court may review actions of Circuit Court of Appeals directing remand to a state court, and Supreme Court's jurisdiction is not defeated because mandate of Circuit Court of Appeals has issued. Aetna Cas. & Sur. Co. v Flowers, Tenn. (1947) 67 789 330 US 464 91 1 Ed 1024.

CONCLUSION

Appellant seeks relief from manipulative dismissals and the affirming of conflict of interest and failure to rescue in dismissals of pro se litigant appeals regarding real and personal properties in the Court of Appeals. She contends that she suffers irreparable damage and the loss of a right to never be regained in her retirement home. Appellant

prays this Supreme Court hears her appeal, and in the alternative award jury trial in this case.

On the _____ of September, 1988.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed First Class to Mr. Larry Brandon, Attorney at Law, 5065 Uptown Station, Mufreesboro, Tennessee 37133, and all parties of interest in this cause.

_____

STATE OF MICHIGAN
COUNTY OF WAYNE

_____
NOTARY PUBLIC

My commission expires: _____

APPENDIX A(a)(1)
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK No. 1:85-0125

v

THOMAS STACK AND FILED: June 21, 1988
HENRY HENRY & STACK

AFFIDAVIT

To whom it may concern;

My name is Mary Mitchell. I live at R #3 Box 63B Lawrenceburg, Tennessee 38464.

On or about Sept. thru Nov. of 1987, I was reading my newspaper the Laurence County Advocate, when a familiar name caught my eye. The name of that person was Earlene Polyak. Realizing I had met her on about 3 occasions in the past, I read more, out of curosity. The contents of the article was non-resident of some sort. The content of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondence in which I last received from Earlene Polyak some years ago. She had revealed to me that she own a mobile home situated on some property

here in Lawrence County, TN. Upon meeting her again some 6 months after I had read the article, I casually mentioned it to her, at this time, she informed that she knew nothing of this.

This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

My commission expires: August 8, 1988

Signed Mabel Evelyn Hedgepath, Notary Public

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit. **PRO SE APPELLANT'S BRIEF** to Appellant.

Buford Evans & Sons Plaintiff-Appellees v Earlene Polyak, Defendant-Appellant (Counter-Claim) No. 87-6272 District Court No.1:85-0120. Dismissed: October 28, 1987 WITHOUT JURY TRIAL.

Notice of Appeal to the United States Court of Appeals on November 13, 1987.

Dismissed May 14, 1988 DISMISSED IN DOCKET CONTROL.

Petition for Rehear denied on July 12, 1988.

Appeal and Rehear before: ENGEL, Chief Judge, Nelson and Ryan, Circuit Judges.

Appellant was denied appeal as a right by state Judge supported by state statute after Rule 5(a) Tennessee Rules of Appellate Procedure amended to delete the requirement copy of Notice of Appeal be filed with Court of Appeals. Court of Appeals affirms dismissal in appeal to conflict of interest and failure to rescue by United Stastes District Judge for in

bias for various local persons. Affirming of conflict of interest and failure to rescue appealed to Court. This Case dismissed in docket control and Buford Evans defaulted in appeal by neglect to file any briefs.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

BUFORD EVANS & SONS
Plaintiff/Appellee

FILLED JULY251988
No. 87-6272

v

EARLENE POLYAK (Counter-Claim)

AMENDED NOTICE OF APPEAL

Appellant Earlene Polyak, appeals the affirming of the dismissal of the above action for conflict of interest and failure to rescue by the Honorable Thomas A. Higgins in the District Court and denial of sale of properties in docket control on May 25, and rehear in docket control on July 12, 1988, by the Court of Appeals. She amends appeal on July 15, 1988 show that it is to the Supreme Court of the United States. She believes that conflict in bias for local residents against pro se litigant's rights and interest in properties supported by state statute and case law and federal and constitutional rights and laws.

Appellant contends that Appellees have defaulted in failure to answer complaint and counter-claim and that pro se litigant's

PREPAID APPEAL FEE in this appeal is tainted before Judges by required Forma Pauperis PRO SE LITIGANT'S form submitted by the Court of Appeals. She appeals denial of due process and deprivation of civil and constitutional rights and laws.

On the 23rd day of July, 1988.

Earlene Polyak
3179 Middlefield Drive
Trenton, MI 48183
(313) 676-3364

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

BUFORD EVANS & SONS FILLIED NOV 13 1988
Plaintiff/Appellees

v No. 87-6272

EARLENE POLYAK (Counter-Claim)

NOTICE OF APPEAL

Appellant Earlene Polyak, gives notice of appeal to the affirming of conflict of interest and failure to rescue by the Honorable Thomas A. Higgins in the United States District Court in order denied by the Court of Appeals and petition for rehear on July 12, 1988. She believes that conflict of interest in bias for

local residents against state statute and case law supported by federal and constitutional laws and property rights and interests of pro se litigant. Appellant appeals abuse of discreation by the Court of Appeals and the denial of due process and deprivation of civil and constitutional laws and rights. This appeal is taken pursuant to 28 U.S.C. 1254(2). On the 15th day of July, 1988.

Earlene Polyak
3179 Middlefield Drive
Trenton, MI 48183
(313) 676-3364

CERTIFICATE OF SERVICE

I certify that a true copy of this pleading has been mailed to Larry Brandon, Mufreesboro, Tennessee 37133.

Signed Earlene Polyak

I certify that a true copy of (Amended Notice of Appeal was mailed on July 15, 1988) to Larry Brandon, 5065 Uptown Station, Mufreesboro, Tennessee 37133.

Signed Earlene Polyak

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

BUFORD EVANS & SONS
Plaintiff-Appellee

v

O R D E R
FILED: 07/12/88

EARLENE POLYAK
Defendant-Appellant

BEFORE: ENGEL Chief Judge; Nelson and Ryan Circuit Judges.

This pro se litigant has filed a motion for reconsideration of this Court's May 25, 1988 order affirming the denial of Appellant's motion to remove this suit to federal court.

After careful consideration the panel concludes that it acted under no misapprehension of law or fact in issuing its order. Fed. R. App. p. 40(a).

Accordingly, it is Ordered that the motion for reconsideration be and is hereby denied.

Signed Leonard Green

NO. 87-6272
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS
Plaintiff-Appellees

FILED: May 25, 1988

v

ORDER
NOR RECOMMENDED FOR
FULL TEXT PUBLICATION

EARLENE POLYAK (Counter-Claim)
Defendant-Appellant

BEFORE: Engel, Chief Judge Nelson; and RYAN, Circuit Judges.

This pro se litigant appeals the District Court's judgment denying her petition to remove a suit brought by a surveyor to collect his fees. The defendant has also moved this court to stay the sale of her property pending appeal. This case has been referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the record and the briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. p. 34(a).

Upon review, we affirm the judgment of the District Court and deny defendant's motion

for stay pending appeal. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

CASE NUMBER: 87-6272
CASE NAME: Buford & Sons Plaintiff/Appellee v Earlene Polyak Defendant/ Appellant

PRO SE APPELLANT'S BRIEF

DIRECTIONS: Answer the following questions about the appeal to the best of your ability, if necessary, use additional paper. You need not limit your brief soly to this form but you should be contains answers to the questions below. If you are asking for specific relief such as appointment of counsel, the provision of a transcript at government expense, or leave to proceed without prepayment of fees, please make that request at the conclusion of the brief. The Court prefers direct statements within 28 days you should return your completed brief to:

The Office of the Clerk
United States Court of Appeals, Sixth Circuit
524 Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

1. Did the District Court fail to consider important grounds for relief. Yes Brief pp. 2-4.

2. Did the District Court incorrectly decide the facts. Yes Brief pp. 4-7.

3. Do you think the District Court applied the wrong law. Yes Brief p. 7.

4. Do you feel there are other reasons why District Court's judgment was wrong. Yes Brief pp. 7-9.

5. What action do you want the Court to take in this case. Brief pp. 9-10.

6. Do you think the Court should hear oral argument in this case. Yes Brief p. 10.

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the 4th day of January, 1988.

Signed Earlene Polyak

APPENDIX B

In the United Stats District Court, Middle District of Tennessee.

Buford Evans & Sons, Plaintiff v Earlene Polyak Counter-Claim No. 1:85-0120.

Dismissed on October 28, 1988.

The Honorable Thomas A. Higgins presiding.

Appellant filed complaint against the Honorable Jim Hamilton and the Circuit Court of Lawrence County, after Judge denied Motion to Forward Record for Appeal on November 7, 1985, and denied appeal as a right supported by Tennessee Statutue No. 1:85-0116.

Rule 5(a) Tennessee Rules of Appellate Procedure amended to delete the requirement that Notice of Appeal be filed with the Court of Appeals on August 15, 1985, which allows for discrimination against race sex and non-resident pursuant to 28 U.S.C. 1443.

This case removed and joined under 28 U.S.C. 1441(c) to 1:85-0116. Both cases

dismissed without hearing or jury trial by the Honorable Thomas A. Wiseman, who enjoined Appellant from filing any complaints regarding property in Lawrence County on November 13, 1985. Judge Higgins denied motion to disqualify from all cases:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FILLED NOV 12,87

BUFORD EVANS & SONS DEMAND JURY TRIAL

v No. 1:85-0120

EARLENE POLYAK
Counter-Claim

NOTICE OF APPEAL

Appellant Earlene Polyak, gives Notice of Appeal to the order dismissing the above action for conflict of interest and failure to rescue on November 2, and entered November 4, 1987 to the United States Court of Appeals. She made every effort to notify the Honorable Thomas A. Higgins that she was unable to attend status conference scheduled on October 28, 1987, due to heart problem with medical statements, Affidavit, and telegram from the University of Alabama Cardiac Unit "REQUEST CONTINUANCE NOS. 84-0082, 84-0083, 85-0120, 85-0125, 86-0036 STILL IN CORONARY UNIT OF HOSPITAL, AND verified received October 27, 1988.

Appellant contends that status conference held in her absence will result in the sale of her properties at Public Auction without jury trial and just compensation, and that she has been denied due process civil and constitutional rights and laws, irreparable damage and the right to never be regained to her retirement home. She requests set aside of record in action, dismissal prejudice order and reinstate for jury trial.

On the 10th day of November, 1987.

Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed first class to United States Court of Appeals, Cincinnati, Ohio 45202, and Mr. Larry Brandon, Uptown Station, Mufroesboro, Tennessee 37133.

Signed Earlene Polyak

WESTERN UNION MAILGRAM

MAILOGRAM SERVICE CENTER
Middletown, Va 22645

EARLENE POLYAK
4063 Hood Road Lake Prk Fl 33418

YOUR TELEGRAM OF 10-27 tO JUDGE THOMAS HIGGINS

WAS DELIVERED PM 10-27 SIGNED BY RECPTIONIST.

THANK YOU USING OUR SERVICE.

13022 HOLLENBERG BRIDGETON MO 63044

15:24 EST

MGMCOMP

Telegram message.

MOTION FOR CONTINUANCE NO. 1:84-0082,
1:84-0083, 1:85-0120, 1:85-0125, 1:86-0036.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Re: EARLENE POLYAK FILLED SEPT 24 1986

The Honorable Thomas A. Higgins
1:85-0125, 1:86-0036

MOTION TO DISQUALIFY

Plaintiff Earlene Polyak, moves that the Honorable Thomas Higgins disqualify in the above styled cases and motions. She would like to express respect and regrets she feels obligated to make this request. But it appears that Judge has been misinformed about Plaintiff, and she believes Judge's orders reflect the prejudice, which prejudices the administration of Justice in her cases.

Plaintiff moves that Clerk reassign her cases to a District Judge, who might be more tolerant of her unavoidable health problems, in helping her get her cause before the Court, and of the **pro se litigant**.

On the 18th day of September, 1986.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

Re: EARLENE POLYAK FILLED SEPT 24 1986

The Honorable Thomas A. Wiseman
1:85-0125, 1:86-0036

MEMORANDUM

The Honorable Thomas A. Higgins resumed the proceedings in Case No. 1:86-0036, after the Honorable Thomas A. Wiseman enjoined on May 2, 1986. Judge Higgins disregarded Plaintiff's appeal of Judge Wiseman's order of November 13, 1985, in which Judge enjoined her from filing further cases in District No. 1:85-0116 Earlene Polyak v Jim T. Hamilton and the Circuit Court of Lawrence County and appeal of Judge Wiseman's order, and pronounced her guilty before either case was heard.

Judge Higgins filed No. 1:86-0036, Earlene Polyak v William Boston Boston Bates & Holt. In his order, Earlene Polyak has

filed a number of previous actions related to the partition of certain property in Lawrence county, Tennessee. For reasons stated in the memorandum filed November 13, 1985, and the order entered in Civil Docket No. 1:85-0116... Judge Wiseman found that Earlene Polyak was guilty of abusing the process of the Court and enjoined her from filing further actions in the Court..."Plaintiff believes that this order was prepared by Clerk as Judge Wiseman was **duck hunting**" at this time. She submitted amended order leaving out guilty which had been used two times in the order on June 12, 1986. Judge Higgins disregarded these motions.

Plaintiff understands pro se litigant is exempt from pre-trial conferences under local Rule 11.2, and did not expect to go to the District Court in Nashville. She had recently worn heart monitor for heart problem and was suffering from injuries from fall which required additional therapy. Pre trial

conference scheduled by Robert Boston's motion. She tried to explain to the Court she could not walk and had been in and out of bed for two weeks. Judge Higgin's secretary stated Judge said she could submit motion for health problem. Plaintiff requested hearing in October, over one hundred (100) people died in heat wave on July 1, 1986. Motion grounded in extreme burden going to Court would place upon her health.

Plaintiff learned from call to Court that Motion for Continuance, Motion to join claims, Motion to serve summons were misplaced. She put tracers on mail. Sent copy of Motions by express mail, called lawyers to prevent inconvenience and finally resorted to telegram to Judge Higgins. Motions were allegedly found in another office about 11:00 a.m. on July 1, 1986 after Plaintiff made every effort to prevent pretrial from being held in her absence.

Although Judge appeared to grant continuance, only one day and issued Order on July 17, 1986, in preferred treatment for Robert Boston **"the Clerk is directed to close the case administratively to be reopened upon motion and showing good causes by either party."** However, any motion by Plaintiff to reinstate this action on the active docket shall be supported with medical certificate establishing her physical ability to appear in Court and participate in litigation.

"The Court has received correspondence and telegram from Plaintiff addressed directly to undersigned. The Plaintiff is directed to address all pleadings to the Clerk." Richard Boston hand delivers to the Judge.

The clerk is directed not to accept for filing any document that does not bear the caption docket of action pending in this Court. "Clerk returned appeal to Judge Wiseman's order with red mark around.

Judge Higgins alleges Plaintiff's complaint incoherent in many respects." Plaintiff has always tried to qualify that she does not have any knowledge or expertise in the legal profession. She did not expect to be judged professionally by professional standards, and that the purpose of the Courts was to **meet the needs of the people including pro se litigant.**

On the 18th day of September, 1986.

Respectfully submitted,

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a copy of this pleading has been mailed to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 27219, and Thomas Stack, Henry Henry & Stack, 119 South First Street, Pulaski, Tennessee 37204.

Signed Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FILLED SEPT 30 1987

EARLENE POLYAK No. 1:85-0125

v Hon. Thomas Higgins

THOMAS STACK
HENRY HENRY & STACK

MOTION FOR RECONSIDERATION
OF DENIAL OF DISQUALIFICATION

Plaintiff, pursuant to 28 U.S.C. 1441, moves for reconsideration of denial of Motion to Disqualify on September 24, 1987. Motion was timely submitted on September 18, 1986. It is stated in the Rules of the Supreme Court...making due allowance for any case presented...by person appearing pro se.

Mrs. Betty Harris made a mistake on (p. 3) memorandum as Motion to Schedle Jury Trial of Reassigned case was filed with her initials on March 9, 1987. Only Rehear appealed 85-5195.

Mrs. Harris makes another mistake as it plainly stated in memorandum that Motion for

Continuance on July 1, 1986 was grounded in extreme burden going to Court would place upon her health. Over one hundred people (100) died in heat wave, but plaintiff was lucky only hospitalized.

Plaintiff believes that Judge Higgins has a personal bias against her and in favor of adverse party. She moves that all of her cases and motions be reassignhed to another Judge.

On the 28th day of September, 1987.

Respectfully submitted,

Signed Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to Mr. Michael Cain, 29 Public Square, Columbia, Tennessee 38204.

Signed Earlene Polyak

This motion is still pending and disregarded by Judge Higgins when the Judge conducted trial on May 31, 1988. Judge again

showed bias for these lawyers when Judge asked them to stand and introduced them to the jury. Plaintiff again asked Judge to disqualify, but Judge refused. Judge dismissed case before allowing to go to jury.

The Judge has demonstrated conflict of interest in these orders and bias for lawyers, but Court of Appeals continues to affirm unjustice.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS & SONS FILLED OCT 21 1987

v No. 1;85-0120

EARLENE POLYAK
(Counter-Claim)

MOTION FOR A CONTINUANCE

Plaintiff moves for a continuance in action in above styled case from October 28, 1987 to April , 1988, due to the unnecessary burden her appearance in Court would place upon her health at this time. As a result of recent hospitalizations, family physician and heart

specialist insist on immediate treatment for heart. Family physician recommended multiple bypass surgery on November 12, 1987.

Plaintiff requests continuance be granted until April 1988, to allow her to continue complaint for jury trial. Affidavit and physician's statement attached.

Earlene Polyak
3179 Middlefield Dr.
Trenton, MI 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this pleading has been mailed to Buford Evans, Lawrenceburg, Tennessee 38464.

Signed Earlene Polyak

October 16, 1987 To Dr. Kirkland, University Cardiac, University of Alabama

RE: Earlene Polyak

Dear Sir:

Please examine and treat Earlene Polyak, who has disabled angina, and had previous bypass.

If you would like more information regarding this patient, please feel free to contact Dr. N. Gupta, Cardiologist at (313) 676-8400.

Thank you very much for seeing this patient.

Sincerely,

Delfin F. Santos, MD

ap

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

RE: EARLENE POLYAK FILLED OCT 21 1987

AFFIDAVIT

Earlene Polyak deposes and says:

That she was hospitalized on or about the first of September, again on the first of November, and has received emergency treatments since those hospitalizations. Dr. Delfin Santos, Family physician and Dr. N. Gupta , Cardiologist insist that emergency treatment is necessary for reoccuring heart condition, and arrangements have been made for treatment.

Dr. Santos signed statement on November 12, 1987, stating that Earlene Polyak, patient is not allowed to do anything streneous due to multiple coronary bypass surgery (Exs. enclosed).

In view of the above, Affiant moves for a continuance in the status reports scheduled on October 28, 1987 due to the unnecessary

burden that an appearance in Court would place on her health at this time.

Affiant requests a continuance from October 28, 1987 to continue her complaint for jury trials in the attached cases. She believes that local influence and prejudice have contributed to her inability to get defense as a non-resident in these cases, and she needs additional time to seek legal representation.

Affiant believes that she should receive federal protection as a pro se litigant and given due process and that she not be denied civil and constitutional rights and laws.

On the 19th day of October, 1987.

_____
Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

Signed Enid Hammond
NOTARY PUBLIC

My Commission Expires: April 14, 1990

DELFIN SANTOS, M.D.
P. O. Box 366
Flat Rock, MI 48134
(313) 782-3654

October 12, 1987

Re: Earlene Polyak

Patient is not allowed to do anything streneous due to multiple coronary bypass surgery.

Signed by
Delfin F. Santos, M.D.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FILLED NOV 2 1987

BUFORD EVANS

v No. 1:85-0125

EARLENE POLYAK

ORDER

For the reasons stated in the record at the hearing held in this action on October 28, 1987, this action is dismissed, with prejudice, for failure of Earlene Polyak to attend status conference as required by the order entered September 29, 1987, and for failure to prosecute.

It is so ORDERED.

Signed Thomas A. Higgins

11/2/87

This document was entered on the docket in compliance with Rule 58 and/or Rule 79 FRCP, ON 11/4/87 By BH

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

BUFORD EVANS & SONS

v

EARLENE POLYAK (Counter-Claim)

CIVIL COVER SHEET

PLAINTIFFS	DEFENDANT
BUFORD EVANS & SONS	EARLENE POLYAK
233 East Gains St.	3179 Middlefield Dr.
P. O. Box 190	Trenton, MI 48183
Lawrenceburg, TN 38464	

ATTORNEY
LARRY BRANDON
P. O. Box 5065
Uptown Station
Mufreesboro, TN 37133

CAUSE OF ACTION

Deprivation of Civil and Constitutional Rights

Provided in the Fifth and Fourteenth Amendments

(REVERSE SIDE)

DATE 11/8/85

The above case is being petitioned for removal from the Circuit Court in Lawrence

County, Tennessee in conjunction with Complaint against Jim T. Hamilton, Individually and in his judicial capacity, jointly and severally, and the Circuit Court of Lawrence County, which was submitted to this Court on November 7, 1985.

Appellant alleges that her Civil and Constitutional Rights as provided by the Fifth and Fourteenth Amendments have been violated as the result of denial of right to appeal as stated in Tennessee State Laws, and the Federal Laws of the United States.

CAUSE OF ACTION

Appellant believes that the denial of right to appeal is deprivation of Civil and Constitutional Rights guaranteed by the Fifth and Fourteenth Amendments.

CIVIL COVER SHEET ENDS

Complaint No. 1:85-0116 was dismissed within five days of filing on November 13, 1985, without oral argument or any kind of hearing including Jury Trial demanded in the Complaint.

Complaint No. 1:85-0120, Buford Evans v Earlene Polyak was joined to No. 1:85-0116 under 28 U.S.C. 1441(c) as stated on civil cover sheet, but dismissed within 14 days without oral argument or any kind of hearing and remanded back to the State Court.

The request to consolidate these two cases on appeal to the Court of Appeals was denied by the Supervisor of these cases.

FILED Aug. 24, 1987
Book 20 p. 191
Lein Book 9
Cathy H. McClew
Geneva Frisby C&M

NOTICE OF CLAIM OF LEIN

TO: EARLENE POLYAK
LEINOR; BUFORD EVANS

Please be notified that I, Buford Evans, individually and as Evans Realty and Auction Company, claim a lein against any interest the above person hold in hereinafter described tract of real property in Lawrence County, Tennessee by virture of a judgment obtained against Earlene Polyak in the amount of $485.00

($475.00), plus cost and interest in Case No. 1067, Circuit Court of Lawrence County, Tennessee.

Said property originally consisted of two tracts described in Deed Book 44, P. 94, ROLC, Tennessee, being the property of E. R. Hulen and deeded to Rena Hulen, widow of E. R. Hulen from Frank Hulen and wife, Dora Lee, Earlene Hulen Hill and husband J. H., and Wilma Hulen Lesnansky and husband Michael by Deed if record in Book 89 pp. 175, ROLC, Tennessee and more particularly described as follows:

> Situated, lying and being in the old 14th Civil District (now 3rd) of Lawrence County and beginning at a stone in the turn of Jonestown Road; thence, east with said road 96 poles to the southeast corner of the tract of land which this a part; thence, north 71 poles to a stake in the east boundary of said tract of land of which this is a part; thence, west 96 poles to a willow oak in west boundary of said tract of land of which this is a part; thence, south 71 poles to the beginning and containing 42 1/2 acres, more or less.

This the 24th day of August, 1987.

STATE OF TENNESSEE
COUNTY OF LAWRENCE

Signed Buford Evans

Sworn to and subscribed before me this 24th day of August, 1987.

NOTARY PUBLIC
CERTIFICATE OF SERVICE

I, Buford Evans hereby certify I mailed a true and exact copy of this instrument to Earlene Polyak, 3179 Middlefield Drive, Trenton, Michigan 48183 on the 24th day of August, 1987.

Signed Buford Evans

Mr. Evans filed a lein on February 10, 1986, Notebook 19 P. 396, Book 8 P. 18549.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

BURFORD EVANS & SONS ENTERED Nov. 26, 1985

v Civil Action No. 1:85-0120

EARLENE POLYAK

ORDER

Before this Court is the pro se Petition for removal of suit for peroperty survey, filed by Earlene Polyak. This is the fifth (fourth) under different headings but all delaying with Mrs. Polyak's dissatisfaction with a State Court action in Lawrence County in a partition suit brought by a surveyor to collect his fees.

The Court has dismissed prior actions, and has enjoined Mrs. Polyak from attempting to oigitate this matter in this Court, and from filing any further suits arising out of partition suit.

This case is another mistaken effort on Mrs. Polyak's part. Because it was lodged before the Court issued its injunction, it is not subject thereto.

This case is not removable for several reasons:

1. 28 U.S.C. 1446(b) requires petition for removal to be filed within 30 days after receipt of the defendant of the initial pleading set forth the claim for relief upon which processing is based. Suit was filed in Lawrence County General Sessions Court, and Mrs. Polyak encloses a letter to her dated August 20, 1984, from the Secretary of the State notifying her of suit with an appearance of September 12, 1985, and is therefore untimely over a year.

2. The suit for a debt allegedly due

Evans in the amount of $475.00. Jurisdiction of this Court for removal is governed by 28 U.S.C. 1441(a) cases in which this court would have original jurisdiction. Although Mr. Evans suit against Mrs. Polyak is between citizen's of different states, the amount in controversy is the amount Mr. Evans sued for $475.00 not amount Mrs. Polyak claims to have lost in adverse judgment of the court in the partition suit. A Counter-Claim cannot supply the necessary prerequisit of $1,000.00 amount in controversy 28 U.S.C. 1332.

3. The petition must be verified. It is not.

4. The petition must contain a copy of the process and pleading served upon her 28 U.S.C. 1446. It does not.

5. The petition must be accompanied by a bond with good surety. There is not surety on Mrs. Polyak dismissed Rule 9(d)(1) Rules of the Sixth Circuit (docket control).

ENTERED BY ORDER OF THE COURT

Signed John P. Hehman Clerk

ISSUED AS MANDATE 6/13/86

Mrs. Henderson allowed Appellant to submit Petition to Rehear. Appellant appealed on being denied civil and constitutional rights and appeal as a right which is supported by Tennessee law and case was joined to 1:85-0116 in the District Court under 28 U.S.C. 1441(c), and diversity of citizenship. She also appealed under 28 U.S.C. 1443(1) and under 28 U.S.C. 1441(d), which states...except that an order remanding a case to the State Court from which it was remanded pursuant to 1443 of this title shall be reviewable by appeal or otherwise. Appellant believes that the invalid map and the survey of her property without her knowledge or permission and the fact that this information can be used for sale at her expense at Public Auction allows for waiving time under 60.02 FRCivP.

Appellant believes that this Petition to Rehear was taken before the same panel and it appears that rehear was not even considered by the Court. Mandate was issued on first order

of dismissal. She learned that District Court did not forward record containing materials submitted as evidence with petition. It is stated on the form returned from the Court of Appeals to the District Court Clerk that the record was never forwarded in this case.

No. 85-6135
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUFORD EVANS & SONS FILED May 12, 1986
Plaintiffs/Appellees

v

EARLENE POLYAK
Defendant/Appellant

O R D E R

BEFORE: KENNEDY CONTIE and RYAN, Circuit Judges.

The within matter came on to for hearing on the petition for rehearing submitted by Appellant. The panel has further reviewed the petiton for rehearing and concludes that the issues raised in the petition for rehearing were fully considered upon original submission and decision of the case. Accordingly, the petition for rehearing is denied.

Signed John P. Hehman

LAW OFFICE OF
LARRY DOUGLAS BRANDON
528 North Walnut Street
Mufreesboro, TN 37133-5065
(615) 890-8517

February 21, 1986

Mrs. Yvonne Henderson
United States Court of Appeals
Sixth Circuit
U.S. Post Office & Courthouse Bldg.
Cincinnati, OH 45202

Re: Case No. 85-6135
Buford Evans et al. v Earlene Polyak
District Court No. 85-0120

Dear Mrs. Henderson:

This letter will confirm our conversation of Friday February 21, 1986 whereby I indicated that I have no intention in participating in the appeal of Mrs. Polyak to the United States Court of Appeals. Please enter this letter for the record. Thanks for your cooperation. I am,

Sincerely,
Larry D. Brandon

cc: Earlene Polyak
4063 Hood Road
Lak Park, Florida 33418

Mr. Buford Evans
P. O. Box 190
Lawrenceburg, Tennessee 38463

When Appellant stated that Mr. Brandon had not be relieved as according to Court Rules, she sated that they wre not going to force any attorney to apppeal case. Prior to this, Mrs. Henderson stated that appeal could not be consolidated with No. 1:85-0116, and dismissal of this case followed.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

April 30, 1986

Mr. John P. Hehman, Clerk
United States Court of Appeals
U.S.P.O. & Courthouse
Cincinnati, Ohio 45202

Re: Case No. 86-5462
Mrs. Polyak Petition for Writ of Mandamus

Dear Mr. Hehman:

This petition complains of the action of the undersigned in failing to file and issue process on a Complaint for Mrs. Polyak against William E. Boston. I have not previously acted upon this Complaint because I was considering

the issuance of a show cause order upon Mrs. Polyak to show cause why she should not be held in contempt of the previous Order of November 23, 1985, whereby Mrs. Polyak was enjoined from filing any further suits in this Court arising out of the partition sale of her property in Lawrence County. That Order was entered because of previous filings of Mrs. Polyak against various persons in this Court, all stating essentially the same facts, and arising out of State Court proceedings which had been fully litigated and adjudicated. I felt Mrs. Polyak was abusing the process of the Court. My decision has been reinforced by the petitons for Writ of Mandamus received today. She has taken an inordinate amount of this Court's time to the determint of the litigants and should be severely sanctioned therefore.

I have rescued myself concerning Mrs. Polyak and a copy of that order is enclosed. Please consider this my response to the petition filed herein.

Yours very truly,
Signed Thomas A. Wiseman

Note: Judge Wiseman presides at the Columbia, Tennessee Division of the United States District Court for the Middle District of Tennessee, which is located in the same building as the State Court. Petitioner believes Judge Wiseman is referring to the Columbia Court in which The Honorable Jim Hamilton presides over state cases, and cases are handled by William Bostson, Boston Bates & Holt, and Thomas Stack Henry Henry & Stack (Buford Evans was retained by these lawyers). The petitions for Writ of Mandamus were submitted to schedule jury trials in No. 86-5460, William Boston Boston Bates & Holt and No. 86-5462, Thomas Stack Henry Henry & Stack in United States Court in Nashville.

COPIES MAILED TO:

Mr. Larry Brandon
Attorney at Law
Mufreesboro, Tennessee 37133

Mr. Ramsey Leathers, Clerk
100 Supreme Court Bldg.
Nashville, Tennessee 37219

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

Re: BUFORD EVANS V EARLENE POLYAK

We are returning herewith the copy of the Notice of Appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the Notice of Appeal be filed with the Clerk of the Appellate Court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

IN THE CIRCUIT COURT OF LAWRENCE COUNTY

BUFORD EVANS & SONS FILED NOV 71985

v Civil Action No.10647

EARLENE POLYAK

O R D E R

This case came on to be heard and before the Honorable Jim T.Hamilton, Motion to Forward Records of this case Circuit Court of Lawrence County, Tennessee the Court of Civil Appeals.

IT IS ORDERED to the Court that Plaintiff's Motion be denied.

This 7th day of November 1985.

Signed Jim T. Hamilton
JIM T. HAMILTON
CIRCUIT JUDGE PART 1

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the Answer therto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

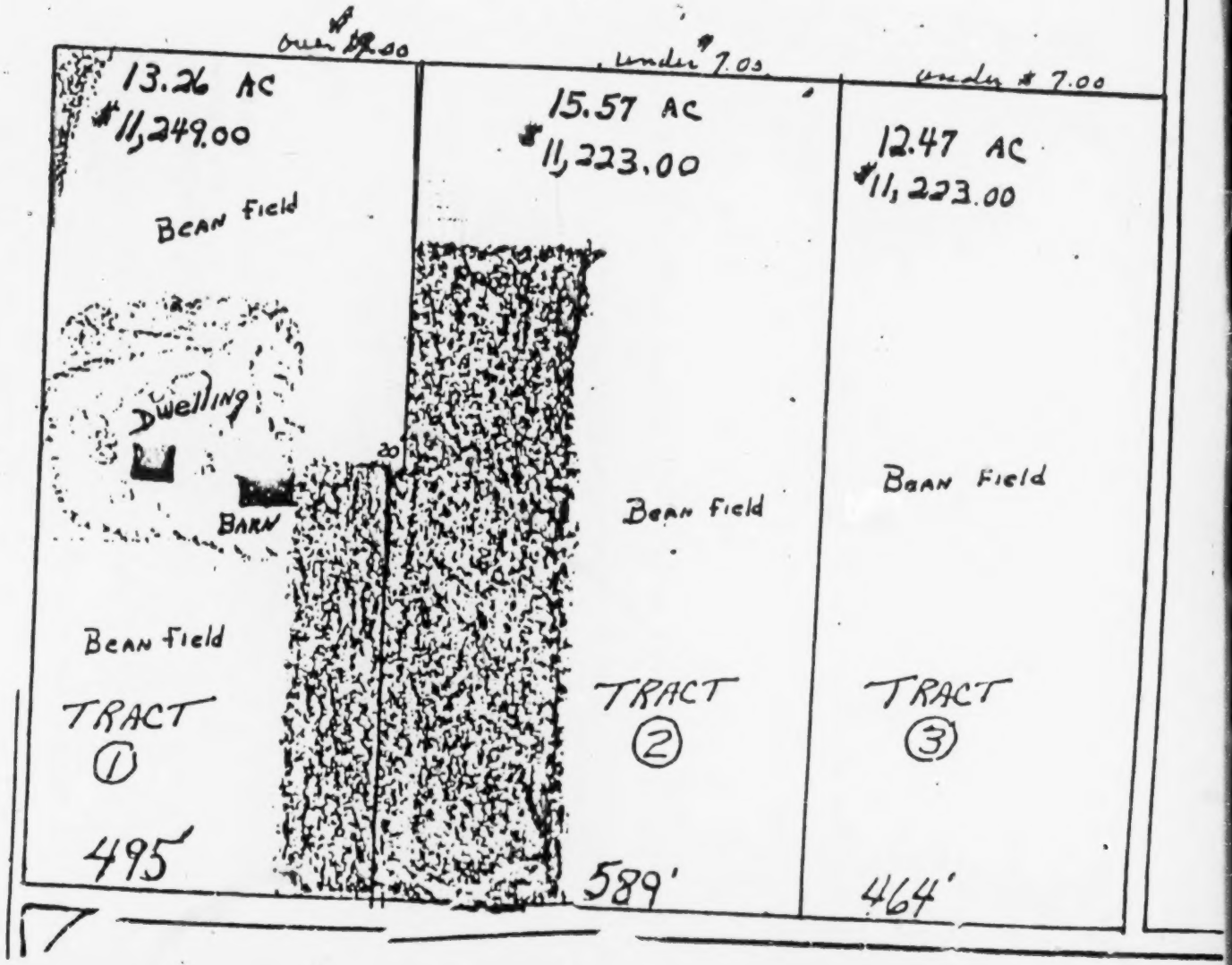
All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack


over $9.00
under $7.05
under $ 7.00
13.26 AC
$11,249.00
Bean Field
Dwelling
Barn
Bean Field
TRACT
①
495
15.57 AC
$11,223.00
Bean Field
TRACT
②
589'
12.47 AC
$11,223.00
Bean Field
TRACT
③
464'
20

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

NO ENTRY DATE
Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this ____ day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497-499 by Geneva Frisbee. This lein for

undisclosed amount. Lein placed by Robert Boston, January 22, 1985, Note Book 19, p. 280, Lein Book 7, p. 542 for $1,112.76.

Mr. Boston's cost and attorney fees were corrected in Court of Appeals to $850.01. Mr. Boston did not serve Appellant with a copy of costs for objections. Costs presented in District Court composed mostly of long distance telephone calls to this father, William Boston.

IN THE COURT OF APPEALS OF TENNESSEE

FRANK HULEN AND WILMA LESNANSKY
Plaintiff-Appellees

ENTERED APRIL26 1984

Lawrence Equity

v

EARLENE POLYAK
Defendant-Appellant

ORDER

On March 20, 1984, an order was entered by this Court granting a rehearing in respect to the order entered on March 2, 1984, dismissing appeal for failure to timely file a

Notice of Appeal with the Trial Clerk; the parties have filed briefs for rehearing;

And it appearing from the record that Appellant's Motion to Alter or Amend was heard on December 19, 1983 that on January 3, 1984, Appellant filed a Notice of Appeal from the final judgment entered on December 20, 1983, but that the order overruling Appellant's Motion to Alter or Amend was not entered until January 10, 1984;

And it further appearing that this situation is governed by TRAP Rules 4(b) and 21(b) which read as follows:

> Rule 4(b) Termination by Specified timely motion in civil actions--in civil action if a timely motion under TRCP is filed in the trial court by any party: (1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact; (3) under Rule 59.03 to alter or amend judgment; or, (4) under Rule 59.01 for a new trial, the time for appeals for all parties shall run from the entry of the order denying a new trial or granting or denying any such motion. A Notice of Appeal filed before the filing or disposition of any of the above motions shall have no effect. The party making the motion after Notice of Appeals is filed shall move in trial court for an

order dismissing appeal. A copy of the order of dismissal by the trial court shall be filed by the moving party with the Clerk of the Appellate Court. A new Notice of Appeal must be filed within the prescribed time measured from the order disposing of motion as provided above.

Rule 21(b) Extension of time--For good cause shown the Appellate Court may enlarge the time prescribed by these rules or by its order for doing any act, or may permit any act to be done after the expiration of such time; but the court may not enlarge the time for filing a Notice of Appeal prescriber in Rule 4, and application for permission for appeal prescribed in Rule 11, or a Petition for Review prescribed in Rule 12.

And it further appearing from that judgment from which appeal is sought is not a final judgment appealable as a right under TRAP Rule 3...

It is therefore ordered that this appeal be and is hereby dismissed at the cost to the Appellant...

ENTERED April 26, 1984

Signed
Judge Henry F. Todd
Judge Samuel L. Lewis
Judge Ben H. Cantrell
Judge Lewis H. Conner